

EXHIBIT 185

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
RS FIT NW LLC,)
Debtors.) Case No.: 20-11558 (KBO)
) (Jointly Administered)

24 HOUR FITNESS WORLDWIDE,)
INC.,)
Plaintiff,)
)
VS.) Adv. Proc. No. 20-51051
) (KBO)
CONTINENTAL CASUALTY)
COMPANY; ENDURANCE)
AMERICAN SPECIALTY)
INSURANCE COMPANY; STARR)
SURPLUS LINES INSURANCE)
COMPANY; ALLIANZ GLOBAL)
RISKS US INSURANCE)
COMPANY; LIBERTY MUTUAL)
INSURANCE COMPANY;)
BEAZLEY-LLOYD'S SYNDICATES)
2623/623; ALLIED WORLD)
NATIONAL ASSURANCE)
COMPANY; QBE SPECIALTY)
INSURANCE COMPANY; and)
GENERAL SECURITY INDEMNITY)
COMPANY OF ARIZONA,)
Defendants.)

REMOTE VIDEOCONFERENCE 30(b)(6) DEPOSITION OF ALLIED
WORLD NATIONAL ASSURANCE COMPANY THROUGH GLENN SERRANO,
AND DEPOSITION OF GLENN SERRANO.

SEPTEMBER 15, 2022

**Exhibit 185 to Plaintiff's Omnibus Appendix of Evidence in support of its
Oppositions to Defendants' Motions for Summary Judgment**

NELL McCALLUM & ASSOCIATES, INC.

1 REMOTE VIDEOCONFERENCE 30(b)(6) DEPOSITION OF ALLIED
2 WORLD NATIONAL ASSURANCE COMPANY THROUGH GLENN SERRANO,
3 AND DEPOSITION OF GLENN SERRANO, produced as a witness
4 at the instance of the Plaintiff and duly sworn, was
5 taken in the above styled and numbered cause on
6 Thursday, September 15, 2022, from 11:04 a.m. to 5:53
7 p.m., before ROBIN GROSS, CSR in and for the State of
8 Texas, reported by shorthand machine, with the Witness
9 in New York, New York, pursuant to the
10 Federal Rules of Civil Procedure, the Emergency
11 Order Regarding the COVID-19 State of Disaster, and the
12 provisions stated on the record herein.

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25 ALSO PRESENT:

26
27 MS. JESS RAWLS, Videographer, Legal Media, Inc.
28
29 MR. PHIL GONZALES, Videographer, Legal Media, Inc.

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1 P R O C E E D I N G S (11:04 a.m.)

2 30(b)(6) DEPOSITION OF ALLIED WORLD NATIONAL ASSURANCE
3 COMPANY THROUGH GLENN SERRANO, AND DEPOSITION OF GLENN
4 SERRANO,

5 having been duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. WEISS:

8 Q. Good morning, Mr. Serrano. My name is David
9 Weiss and I'm at the Reed Smith law firm and I represent
10 24 Hour Fitness in this case.

11 How are you today?

12 A. Terrific. How about you?

13 Q. Good. Could you please tell us your business
14 address?15 A. Business address is Allied World Assurance
16 Company, 199 Water Street, New York -- 24th floor, New
17 York, New York 10038.

18 Q. Is that where you are today?

19 A. Yes, I am.

20 Q. Were you working in the office before the
21 pandemic?

22 A. Yes, I was.

23 Q. During the pandemic did you continue to work from
24 the office?

25 A. Not initially, no.

1 Q. Is it vice president of environmental claims?

2 A. He -- Joseph supervises me, and I have
3 environmental claims. But Joseph also supervises --
4 supervises two other claim groups separate and apart
5 from environmental claims.

6 Q. What are those claim groups?

7 A. Primary construction and commercial auto.

8 Q. So is it fair to say that you are -- you are in
9 charge of the environmental claims group at Allied
10 World?

11 A. I am.

12 Q. Since March of 2020, approximately how many
13 COVID-19 claims has the environmental claims group
14 handled?

15 MS. BROCKMAN: Objection to form.

16 A. Quite a few.

17 Q. (BY MR. WEISS) Would you say it's more than a
18 hundred?

19 A. Yes.

20 Q. More than -- more than 200?

21 A. Yes.

22 Q. All right. More than 500?

23 A. Yes, I believe so.

24 Q. Okay. Are you -- do you have an understanding as
25 to about how many of those claims are in litigation?

1 A. Let me ask you, by "litigation" are you referring
2 to coverage litigation --

3 Q. Yes.

4 A. -- or --

5 Q. Yeah, that's a good clarification. Coverage
6 litigation, yes.

7 A. Well, I told you about the one.

8 Q. Yeah.

9 A. There's another I'm aware of, and I believe
10 that's it. However, I'd have to -- I would have to
11 double-check.

12 Q. Is the other that you're aware of the Botanical
13 Garden case in New York?

14 A. Yes.

15 Q. Have you -- does any of your -- do any of your
16 job responsibilities involve overseeing the coverage
17 litigation against the company?

18 A. It does not.

19 Q. Have you reviewed any of the depositions that
20 have been taken in the 24 Hour Fitness coverage
21 litigation?

22 A. I have not.

23 Q. Have you reviewed any discovery, written
24 discovery responses from the 24 Hour Fitness litigation?

25 MS. BROCKMAN: You mean in preparation for

1 his deposition or just generally?

2 MR. WEISS: In general.

3 A. No.

4 Q. (BY MR. WEISS) In preparation for your
5 deposition, did you review any documents that you
6 understood were documents produced by any party in the
7 24 Hour Fitness coverage case?

8 MS. BROCKMAN: Objection to form.

9 A. One document comes to mind.

10 Q. (BY MR. WEISS) Okay. What was that?

11 A. The deposition notice that you shared with me a
12 few moments ago. But other than that, I don't
13 recollect.

14 Q. Did you review -- were you aware that we shared
15 with counsel yesterday PDFs of potential deposition
16 exhibits?

17 A. Yes, I was made aware of that by Elizabeth.

18 Q. Did you review any of those potential deposition
19 exhibits to prepare for your deposition?

20 A. I did not.

21 Q. Did you -- Ms. Pertain no longer works for the
22 company; is that right?

23 A. That is correct.

24 Q. When did she leave the company?

25 A. I would say -- I don't remember the date. I

1 believe it was April or May of 2021.

2 Q. Okay. Have you spoken with Ms. Pertain at all
3 regarding the 24 Hour Fitness matter since she left the
4 company?

5 A. I have not.

6 Q. Are you aware that 24 Hour Fitness also submitted
7 a claim for its COVID-related losses under a property
8 insurance policy that was subscribed to by Allied World?

9 A. Yes, I was -- I was made aware of that.

10 Q. When did you become aware of that?

11 A. Well, certainly recently in dealing with
12 Elizabeth Brockman, I -- I learned about that; but
13 anecdotally I heard something about it, but the details
14 of which I was not familiar with.

15 Q. Did you talk to any individuals within Allied
16 World regarding the property policy claim in connection
17 with preparing for your deposition?

18 A. I did not.

19 Q. Is there a separate claim department at Allied
20 World that handles claims under property insurance
21 policies?

22 A. Yes.

23 Q. What is that claims department called?

24 A. The actual name itself? I don't remember, don't
25 know. But it's along the lines of -- mine is called

1 environmental claims department; that, it may be a
2 property claims department. I would assume so, but I --
3 I can't tell you for certain.

4 Q. With regard to any of the more than 500 COVID
5 claims that are -- that have been handled by your
6 department, are you aware of any other ones that are
7 similar to 24 Hour Fitness where there's an overlap with
8 a property policy claim at Allied World?

9 MS. BROCKMAN: Objection to form.

10 A. I am not.

11 Q. (BY MR. WEISS) Is that something that you would
12 necessarily become aware of or you just may not know one
13 way or the other?

14 A. I can't say for certain, but I don't believe --
15 maybe I'm wrong, but I don't believe they're involved in
16 the other two coverage litigation matters we have. They
17 may be, I -- but I don't know.

18 Q. And how about any of the other claims that are
19 not in litigation, are you aware of any of those where
20 there's a property claim as well as an environmental
21 claim?

22 A. I don't remember any right now.

23 Q. Let's briefly talk about your educational
24 background. Where did you attend college?

25 A. City University of the City of New York.

1 on how many hours you need to take, log, in order to
2 maintain your licensing in that jurisdiction. And if
3 you don't, then you can't handle claims in those
4 jurisdictions.

5 Q. How many claims handlers are there that work
6 underneath you in your group, in the environmental
7 claims group?

8 A. Three.

9 Q. Three. And has that been pretty much steady from
10 February 2020 to the present?

11 A. Yes, it has.

12 Q. And are there categories of employees that work
13 underneath the claims handlers as well?

14 A. If you're asking if they have subordinates?

15 Q. Yes.

16 A. No, they don't.

17 Q. When -- when something of interest comes -- comes
18 in from, say, Law360 regarding a topic like COVID, is
19 there somebody responsible for summarizing it and
20 sending around a summary to the group?

21 A. No. Because we're all tuned in with it, we're
22 all on those email chains.

23 Q. Is that something that you might do from time to
24 time, see a story that's interesting to you and send a
25 summary around to the team?

1 A. I -- not a summary, but I may bring to someone's
2 attention a case, a ruling; not necessarily on COVID, of
3 course. It could involve whether ABC is a pollutant or
4 not, and a decision from a given jurisdiction that
5 people need to know or want to know about.

6 Q. Does Allied World, in your department in
7 particular, maintain some central repository where
8 articles of interest are stored so that somebody can go
9 onto the system and see what's -- what's available?

10 A. We do not.

11 Q. Do you maintain your own file electronically
12 where you store articles of interest to you as part of
13 your job?

14 A. I do not.

15 Q. Do you know if any of the claims handlers
16 maintain folders, like email folders or some other
17 folders electronically, where they store information of
18 interest to them?

19 A. I don't believe so.

20 Q. Is there -- has there been some directive that
21 people not do that?

22 A. No.

23 Q. Does the environmental claims group use claims
24 adjusters from time to time on claims it handles?

25 A. Well, we're the claim handler.

1 Q. Okay.

2 A. If -- I'm not sure -- if you want to rephrase or
3 ask the question separately, I'm not understanding.

4 Q. Yes. Let me try to frame it this way. So on the
5 property side of this -- of this case, there's a -- the
6 insurance policy designated a claims adjuster, an
7 outside firm, to be responsible for adjusting claims and
8 obtaining information from the policyholder, maybe doing
9 investigation if appropriate. And so it's not somebody
10 who is an employee of the insurance company, but it's an
11 outside firm.

12 You know, there's firms like McLaren's and things
13 like that that you might be familiar with. So I guess
14 my question is does the environmental claims group ever
15 use an outside adjusting firm to assist?

16 A. Oh, thank you for clarity.

17 Q. Yeah.

18 A. Thank you for clarification. 99.9 percent of the
19 time, no. I'm here now five years. I've used McLaren's
20 once and it was a mold claim -- I'm sorry. I'm sorry.
21 It was a lead claim, a lead claim, where people were
22 asserting PD, property damage, damage -- in other words,
23 damage to their furniture and clothing.

24 Q. Uh-huh.

25 A. And so as you can well imagine, there's like

1 hundreds of items of clothing and furniture that needed
2 to be categorized, itemized. So I brought in McLaren's
3 on it. That was the only time.

4 Q. Got it. Does the environmental claims team
5 retain outside consultants from time to time, such as an
6 environmental consultant, to -- to do testing, for
7 example?

8 MS. BROCKMAN: Objection to form.

9 A. Sorry.

10 Q. (BY MR. WEISS) You can go ahead and answer.

11 A. Yes.

12 Q. Can you just briefly explain the circumstances
13 under, generally, where you would retain an outside
14 environmental consultant on a claim?

15 A. Of course. We bring in environmental consultants
16 to conduct investigations. And do you want me to
17 present you with an example of one?

18 Q. Yeah, that would be fine. Yeah, that would be
19 fine, thank you.

20 A. An insured submits a notice of mold incident at a
21 warehouse and they say, Glenn, I've got mold at a
22 warehouse. Here are the photos. I got an estimate for
23 the cleanup. It's going to be X millions of dollars to
24 conduct the mold remediation.

25 So I see the photos. It looks like mold -- would

1 look like mold to you, too. But, you know what? It's a
2 lot of money. I'm going to pay somebody to go get out
3 there and do our own tests, of which we did. But guess
4 what happened?

5 Q. It wasn't mold?

6 A. How did you know? (Laughing.) He went out
7 there. You know what? The walls were dirty.

8 Q. Okay.

9 A. And he said to me, Glenn, soap and water will do
10 the trick.

11 Q. Okay.

12 A. I said -- now, this guy is a certified CIH,
13 certified industrial hygienist, very talented, very
14 experienced. He's testified before. He's top of -- top
15 of the line.

16 I said, are you certain of that?

17 He said, Glenn, I'm certain of it.

18 We got the insured on the phone with my
19 consultant. He didn't know. All he has is an estimate.

20 He said, Thanks so much. Appreciate that.

21 So they cleaned the walls down, there was no mold
22 associated with it, and we had another happy insured.

23 So to answer your question, the long -- the long
24 answer, but the short -- the short abbreviation of it is
25 yes.

1 Q. Okay. With regard to any of the COVID-19 claims,
2 has Allied retained any outside consultants to do any
3 sort of investigation?

4 A. Yes.

5 Q. What type of investigation do they retain
6 consultants to do?

7 MS. BROCKMAN: Objection to form.

8 Q. (BY MR. WEISS) Let me ask what type of
9 investigations did Allied World retain consultants to do
10 in connection with COVID-19?

11 MS. BROCKMAN: Same objection.

12 A. Okay. It involved invoicing, Mr. Weiss, for
13 cleanup.

14 Q. (BY MR. WEISS) Okay. So was that an accountant
15 expert?

16 A. No, it was an environmental -- environmental
17 consultant.

18 Q. To review invoices that had been submitted by the
19 policyholder?

20 A. And their environmental engineering company.

21 Q. Okay. Has Allied World retained any
22 environmental consultants to do any testing of any
23 properties in connection with a COVID-19 claim?

24 MS. BROCKMAN: Objection to form.

25 A. I don't recall any.

1 Q. (BY MR. WEISS) Are you aware of any prior claims
2 submitted by 24 Hour Fitness under an Allied World
3 pollution or environmental policy, besides the COVID
4 claims?

5 A. I am not.

6 Q. Other than COVID-19, have you worked on any prior
7 claims that involved losses allegedly caused by a virus?

8 A. Yes.

9 Q. Okay. Can you generally describe what those are?

10 A. Mold. Mold claims and -- one of the biggest
11 frequency of claims that we get in environmental claims
12 is mold. So that -- we -- we have received, handled,
13 evaluated, many mold claims.

14 Q. Have you worked on any prior claims unrelated to
15 COVID that involved a communicable disease?

16 MS. BROCKMAN: Objection to form.

17 A. None come to mind. If -- you're asking like
18 eboli -- or --

19 Q. (BY MR. WEISS) Like SARS, Ebola.

20 A. Ebola.

21 Q. Things of that nature.

22 A. I have not. We have not.

23 Q. Have you worked on claims involving Legionella
24 before?

25 A. Yes, I have. Thank you.

1 Q. And what is your understanding of Legionella?

2 A. From time to time we get Legionella -- notices of
3 Legionella from insureds, some cleanup and some
4 third-party claims.

5 Q. Is --

6 A. We don't have -- I'm sorry. Go ahead.

7 Q. Oh, finish. Sorry.

8 A. We don't have great frequency with them; but we
9 do have them from time to time, yes.

10 Q. What is your understanding of what Legionella is,
11 not a scientific understanding, but just from a lay
12 perspective?

13 A. Legionella is -- is carried through water systems
14 and in the atmosphere; and one of the treatment
15 modalities associated with it is the flushing out of
16 water systems to clear it, the Legionella out of
17 systems. Usually it occurs from stagnant water in
18 piping or in structures.

19 Q. In any of those Legionella claims, has Allied
20 World retained experts to do testing?

21 MS. BROCKMAN: Objection to form.

22 A. We do not do the testing, but we evaluate -- we
23 evaluated tests performed and/or requested additional
24 testing to be done. And when the tests are conducted,
25 we review them.

1 Q. (BY MR. WEISS) Was the testing that you
2 requested to be done by the policyholder?

3 A. Their consultant, environmental -- environmental
4 expert or consultant.

5 Q. So you're not aware of any situation where Allied
6 retained its own environmental consulting -- consultant
7 to do testing in a Legionella situation?

8 A. Well, in a third-party bodily injury context,
9 Mr. Weiss, due to attorney-client privilege, we request
10 insureds to -- or counsel to retain those individuals
11 such that there's privileged protection, of course.

12 But --

13 Q. You --

14 A. -- we evaluate, I have outside consultants
15 evaluate those reports, but they're not preparing
16 reports.

17 Q. Do you recall any Legionella claims submitted by
18 24 Hour Fitness before?

19 A. I don't recollect any.

20 Q. In any of the other COVID-19 claims that Allied
21 World is handling, has Allied World made a determination
22 that COVID-19 was actually present at an insured's
23 location?

24 MS. BROCKMAN: Objection to form.

25 A. Mr. Weiss, I was distracted by somebody walking

1 by. I'm sorry.

2 Q. (BY MR. WEISS) Oh, no problem.

3 A. If you don't mind the court reporter repeating
4 it, or you want to repeat it for me?

5 Q. Let me try. In any of the other claims that
6 Allied World is handling involving COVID-19, other than
7 24 Hour Fitness, do you know if Allied World has made a
8 determination that COVID-19 was present at an insured's
9 location?

10 MS. BROCKMAN: Objection to form.

11 A. Allied World did not make an independent
12 evaluation to determine whether COVID was present at a
13 location; however, I did ask for information, data,
14 evidence of it.

15 Q. (BY MR. WEISS) In any other COVID-19 insurance
16 claim, has the policyholder provided satisfactory
17 evidence to Allied that there was COVID-19 present at an
18 insured location?

19 MS. BROCKMAN: Objection to form.

20 A. In the -- in the cleanup context, I was
21 provided -- we were provided with invoicing for cleanup,
22 but not presented with evidence of COVID-19 at a
23 location.

24 Q. (BY MR. WEISS) Did -- keep going, sorry.

25 A. I was advised in various -- various scenarios

1 where people informed me that these were preventative
2 measures taken based on somebody reporting that they
3 were at a specific location and a person identifying
4 themselves as being diagnosed with COVID.

5 Q. Okay. In -- in a situation like that, where you
6 were presented with information that someone had been
7 diagnosed with COVID at a location, did Allied accept
8 that as -- as evidence that there was COVID present at
9 the location?

10 MS. BROCKMAN: Objection to form.

11 A. We -- we asked for evidence of it -- by that, I
12 mean swipe samples taken on a surface -- and were not
13 provided with same. We were provided with invoicing,
14 but not with evidence of COVID on a particular site or
15 location.

16 Q. (BY MR. WEISS) Okay. The particular claim that
17 you're thinking of where you received information of an
18 individual who may have tested positive and had been
19 present at the location, is that the same claim that
20 you -- that you're also thinking about where the
21 invoicing was provided?

22 MS. BROCKMAN: Objection to form.

23 A. That's --

24 THE WITNESS: Pardon me, Elizabeth?

25 MS. BROCKMAN: You can answer.

1 THE WITNESS: Thank you.

2 A. That's one of them, Mr. Weiss.

3 Q. (BY MR. WEISS) And there have been other claims
4 involving COVID-19, correct, where the policyholder has
5 provided information of individuals who they said had
6 tested positive for COVID and were present at the
7 location; is that correct?

8 MS. BROCKMAN: Objection to form.

9 A. That's what I was advised.

10 Q. (BY MR. WEISS) In those particular -- in any of
11 those particular cases, did Allied World accept that
12 information as sufficient evidence of COVID being
13 present at the location?

14 MS. BROCKMAN: Objection to form, and I'll
15 also object to the extent that it seeks information
16 protected by the attorney-client privilege.

17 A. In environmental claims we -- we ask for
18 information, data of a pollution incident, what it was,
19 what was -- the nature of it, mold or anything else,
20 what was the spill, what was the nature of the
21 contamination, where it happened, when it happened.

22 And in these scenarios I would ask -- we would
23 ask: Please present us with swipe samples of the area
24 that you identified as containing COVID.

25 Q. (BY MR. WEISS) Is it Allied's position that in

1 the absence of a swipe sample showing the presence of
2 COVID on a surface that the -- that there -- that no
3 pollution incident has occurred at a particular
4 location?

5 MS. BROCKMAN: Objection to form.

6 A. There has to be some evidence submitted to Allied
7 World of a pollution incident and what it is.

8 Q. (BY MR. WEISS) And is it Allied World's position
9 that that evidence has to be evidence of the virus
10 present on a surface?

11 A. On a surface, a structure -- on a surface or
12 structure.

13 Q. How about evidence of the virus in the air inside
14 of a structure, would that constitute a pollution
15 incident?

16 MS. BROCKMAN: Objection to form.

17 A. If -- if presented with air sampling, it very
18 well may constitute a pollution incident of -- under the
19 policy, if presented with air sampling.

20 Q. (BY MR. WEISS) Is Allied World aware of any
21 surface testing that was available in the 2020 time
22 period that would -- that a policyholder could use to
23 demonstrate the presence of COVID-19 on a surface?

24 MS. BROCKMAN: Objection to form.

25 A. Well, samples in -- did you say -- I'm sorry, did

1 you say 2019?

2 Q. (BY MR. WEISS) I'm sorry. Is Allied World --
3 was Allied World -- strike it. Let me try this again.

4 Is Allied World aware of any testing that was
5 available during 2020 that a policyholder could have
6 undertaken to demonstrate the presence of COVID-19 on a
7 surface inside of a building?

8 MS. BROCKMAN: Objection to form.

9 A. Well, if sampling was taken of bacterium on a
10 surface and that was submitted to a lab and from that
11 bacterium it was determined that COVID was present --
12 present on that surface, and that data was presented to
13 Allied, me, Allied World and my handlers, that was --
14 that's an example of COVID on a surface, yes, I would
15 say so.

16 Q. (BY MR. WEISS) Is Allied World aware that that
17 type of testing was available in 2020, where you could
18 test a surface for the presence of COVID-19?

19 A. Tests were developed after March of 2020,
20 Mr. Weiss, to test people to determine whether they had
21 COVID. I'm not here as a medical expert or a scientist;
22 however, if tests can take a culture from somebody and
23 identify that person as having COVID, that person's
24 bacteria or droplets upon a surface may also be able to
25 capture that. I would assume so. But I'm -- I'm not a

1 medical expert.

2 Q. In any -- in any of the COVID-19 claims that have
3 been made to Allied, has a policyholder in any of those
4 claims submitted a test result showing the presence of
5 COVID-19 on a surface inside of a building?

6 MS. BROCKMAN: Objection to form.

7 A. Attempts, but I haven't seen any.

8 Q. (BY MR. WEISS) And in any of those COVID-19
9 claims that have been submitted to Allied, have any
10 policyholders submitted a test result to Allied showing
11 the presence of COVID-19 in the air inside of a
12 building?

13 MS. BROCKMAN: Objection to form.

14 A. No.

15 MR. WEISS: Can we take -- why don't we take
16 a break now because we've been going like almost an hour
17 and a half. Is that okay --

18 THE VIDEOGRAPHER: Off the record -- I'm
19 sorry.

20 MR. WEISS: Is that okay?

21 THE VIDEOGRAPHER: Off the record at 12:24.

22 (Recess from 12:24 p.m. to 12:35 p.m.)

23 THE VIDEOGRAPHER: We're back on the record
24 at 12:35.

25 Q. (BY MR. WEISS) Mr. Serrano, where did you work

1 A. There are other situations like that where I'll
2 send someone out to do a test, to do a site inspection.
3 Let's say there's a tank in the ground, needs to come
4 out. Insured tells me, Glenn, we're taking this tank
5 out. We're affording you the opportunity of reviewing
6 it, test it, photograph it, before it comes out of the
7 ground. It's up to you if you want to do it.

8 So we either say the photos are fine, or we send
9 someone.

10 Q. Has Allied sent anybody out to visit any sites in
11 connection with any COVID-19 claims that have been
12 submitted?

13 MS. BROCKMAN: Objection to form.

14 A. I have not. No. I testified a few moments ago
15 I've had a lot of claims come in, but I don't recollect
16 any.

17 Q. (BY MR. WEISS) And you -- and you talked about
18 the mold claim where you sent out somebody to test for
19 mold. Why hasn't Allied sent anybody out to any of
20 these COVID-19 claim locations to do any testing?

21 MS. BROCKMAN: Objection to form.

22 A. Well, when -- when notices come in, a notice
23 says -- typically said that someone in the finance
24 department, for example, reported that they have
25 COVID -- that they had COVID; and they're now at home

1 until they recover. And I ask for evidence of the
2 testing of the work environment to determine whether
3 COVID was present at the work environment. And what
4 would typically happen, Mr. Weiss, was a tenant -- a
5 tenant would clean down a surface, report to me that
6 they cleaned down a surface. I asked for testing, and I
7 wasn't provided with evidence of COVID on a surface at
8 the work environment.

9 Q. (BY MR. WEISS) In -- are you aware, in any of
10 the COVID claims that Allied is handling, of Allied
11 providing names of testing companies to any
12 policyholders that they might consider using to do the
13 type of testing that you've talked about?

14 MS. BROCKMAN: Objection to form.

15 A. Our insureds are aware of environmental
16 consultants available out there, certified industrial
17 hygienists and other people who specialize in -- in work
18 environment, safety issues, and health.

19 Q. (BY MR. WEISS) How do you know that your
20 insureds are aware of that?

21 MS. BROCKMAN: Objection to form.

22 A. Oftentimes insureds would advise me that they
23 retained such and such company to come out and conduct a
24 cleaning, sanitary cleaning of the work area where a
25 given individual self-reported that they -- they had

1 COVID. And I typically would ask, well, provide me with
2 the tests, because I need that under my policy to show
3 evidence of a pollution incident.

4 Q. (BY MR. WEISS) Are you aware of any claims where
5 Allied has told a policyholder, please, before you clean
6 the surfaces, do a test for COVID?

7 MS. BROCKMAN: Objection to form.

8 A. We quoted the policy verbiage on it, which --
9 which sets forth that the insured has the burden of
10 establishing a pollution incident, and so they were made
11 aware of what we needed.

12 Q. (BY MR. WEISS) Do you agree that under the
13 24 Hour Fitness policy, the policy says that the
14 presence of microbial matter inside of a building
15 constitutes a pollution incident?

16 MS. BROCKMAN: Objection to form.

17 A. The policy requires evidence of a pollution
18 incident, whether it's -- whatever the pollutant is on a
19 surface -- let's say it's mold on a surface -- we need
20 photos or independent evidence of it, testing, in order
21 for us to determine whether there is a pollution
22 incident. It may not be. And so that's part of our
23 investigation and analysis.

24 Q. (BY MR. WEISS) Does the policy require that the
25 pollution -- or strike that.

1 Does the policy provide that the substance be
2 actually on a surface?

3 MS. BROCKMAN: Objection to form.

4 A. The -- it's a reference, Mr. Weiss, to land,
5 structure on land, pollutant into or upon land or any
6 structure on land or the atmosphere, including indoor
7 air and so forth.

8 Q. (BY MR. WEISS) Okay. So indoor air is not a
9 surface, correct?

10 MS. BROCKMAN: Objection to form.

11 A. It's one -- it's not a surface, but it's -- the
12 verbiage right before "indoor air" references a surface,
13 land or a structure on land.

14 Q. (BY MR. WEISS) And are you reading from the
15 24 Hour Fitness policy?

16 A. Yes, the definition of pollution incident.

17 Q. And is one of the definitions of pollution
18 incident the presence of microbial matter on, at, or
19 within buildings or structures?

20 A. Yes.

21 Q. And is it your understanding that microbial
22 matter under the 24 Hour Fitness policy includes a
23 virus?

24 MS. BROCKMAN: Objection to form.

25 A. Yes, I am.

1 Q. (BY MR. WEISS) So why isn't it sufficient to
2 show the presence of a virus within a building to
3 demonstrate that someone who was infected with the virus
4 was present within the building?

5 MS. BROCKMAN: Objection to form.

6 A. Well, I -- we're looking for evidence of a
7 pollution incident. And you quoted from the microbial
8 matter --

9 Q. (BY MR. WEISS) Correct.

10 A. -- where a virus is contained. And some surface
11 or structure -- mold -- mold is in the atmosphere. We
12 don't remediate the atmosphere. We remediate mold on a
13 surface environment.

14 Q. But in a situation where the policyholder is not
15 seeking coverage for remediation costs but is seeking
16 coverage for a business interruption loss caused by the
17 presence of microbial matter on, at, or within a
18 building or structure, why isn't demonstrating that the
19 business interruption loss was due to the fact that
20 individuals infected with the virus were present within
21 the structure sufficient to establish coverage? Why do
22 you need to have an -- a test showing the presence of
23 the virus on a surface?

24 MS. BROCKMAN: Objection to form.

25 A. Or indoor air. And so testing air, taking air

1 samples, as is done in the mold context, we -- for mold,
2 there's sampling done of air and surface structure --
3 and surfaces.

4 It's part of our analysis. We don't, of course,
5 remediate air for mold because mold is omnipresent in
6 the air; but air can be tested. And regarding these
7 COVID-19 notices, we -- we did not receive testing in
8 the air of -- showing evidence of COVID in the air,
9 within a -- within a structure.

10 Q. (BY MR. WEISS) So if you're presented with
11 evidence of somebody who is positive for COVID who is
12 inside of a building, who sneezed into the air in the
13 building, that would not be sufficient evidence because
14 you need to have a test of the air; is that what you're
15 saying?

16 MS. BROCKMAN: Objection to form.

17 A. Well, using the mold example -- and then we'll go
18 to COVID. With mold, there has to be evidence of a --
19 of a pollution incident, documentation of a pollution
20 incident for mold. And we test -- we test surfaces, and
21 they test air sampling, of course, for mold.

22 Q. (BY MR. WEISS) Okay.

23 A. Same application here. Here, surfaces for COVID
24 or testing of the atmosphere, testing of the indoor air.

25 Q. Well, you're an attorney; and there's all

1 different kinds of evidence. So why isn't a person with
2 COVID inside a building, who sneezes into the air,
3 sufficient evidence of the presence of COVID in the air,
4 as an alternative type of evidence to a test of the air?

5 MS. BROCKMAN: Objection to form.

6 A. Well, I haven't seen the tests of what you're
7 referring to on any of these notices we received.

8 Q. (BY MR. WEISS) My -- my question is assuming
9 there is no test; but we do have evidence of an
10 individual with COVID, who is inside a building, who is
11 coughing or sneezing into the air. And my question is,
12 why isn't that sufficient evidence to show a pollution
13 incident, meaning the presence of the virus?

14 MS. BROCKMAN: Objection to form.

15 A. Well, the insured has a burden of presenting
16 me -- presenting Allied World with evidence of a
17 pollution incident. And if presented with such
18 reportings, I would evaluate that and determine whether
19 there was a pollution incident in that -- in that
20 structure.

21 But I haven't been, in the -- in handling of
22 these claims, haven't been presented with either the
23 bacterium on a surface or air sampling.

24 Q. (BY MR. WEISS) Okay. So it's Allied's position
25 that it needs either a surface test showing the presence

1 of COVID or air sampling test showing the presence of
2 COVID in order for the insured to establish a pollution
3 incident; is that right?

4 MS. BROCKMAN: Objection to form.

5 A. We need data, as we would, Mr. Weiss, in the mold
6 context. If somebody calls Allied World and says,
7 There's mold here.

8 Okay, what -- what's the support thereof?

9 Well, Glenn, it's here. And so we're going to
10 engage somebody to remediate it, and then we'll provide
11 you with the invoicing for it.

12 It's anecdotal and it's not -- it doesn't present
13 me with objective data about it.

14 Q. (BY MR. WEISS) Okay. So you need a test result,
15 correct?

16 A. And it could -- yes. And -- and with mold, the
17 insured either conducts tests or if -- if they don't,
18 then I may send someone out there to do it. And here, I
19 haven't -- I haven't been presented with samples of
20 droplets from -- from a person onto a surface or air
21 sampling, Mr. Weiss.

22 Q. Has Allied World paid any COVID-19 claims?

23 MS. BROCKMAN: Objection to form. Also
24 object to the extent that this seeks other insured
25 information, proprietary.

1 A. I may have. I don't remember.

2 Q. Are you aware that this was published by 24 Hour
3 Fitness on the internet and social media at around the
4 time that it was issued?

5 A. Yes, I have no reason to doubt that.

6 Q. You see at the beginning, Mr. Ueber from 24 Hour
7 Fitness wrote: As we all grapple with the enormous
8 scale and impact of the coronavirus in the U.S., it
9 reminds us of how precious life is and the importance of
10 protecting our own health. For the health and safety of
11 our members, team members and guests, we will be closing
12 all 24 Hour Fitness clubs at 12 midnight tonight, Monday
13 March 16th, until further notice.

14 Do you see that?

15 A. I -- I heard you reading it. I can't read the
16 fine print, but I -- I heard what you said.

17 Q. Okay. Here, is that better? I was reading from
18 the first paragraph.

19 A. Could you make it just a tiny bit larger, please,
20 sir.

21 Q. Sure.

22 A. Thank you.

23 Q. So do you see that first paragraph?

24 A. Yes, I'm reading. Thank you.

25 (Examining document.) Thank you. I just read

1 that. Thank you.

2 Q. Okay. So does Allied World dispute the statement
3 that the CEO of 24 Hour Fitness made that 24 Hour
4 Fitness was closing its clubs for the health and safety
5 of its members, team members, and guests?

6 MS. BROCKMAN: Objection to form.

7 A. Yes, I -- I'm reading exactly what -- what you
8 read from a moment ago, yes.

9 Q. (BY MR. WEISS) Okay. But does Allied World
10 dispute that that was the reason why 24 Hour Fitness
11 decided to close the clubs?

12 MS. BROCKMAN: Objection to form.

13 A. I don't impute any separate mens rea to
14 Mr. Ueber's letter than what is -- what he writes there.
15 I don't.

16 Q. (BY MR. WEISS) Has Allied World, to your
17 knowledge, done any investigation to determine whether
18 there was some other reason 24 Hour Fitness closed its
19 clubs, besides closing for the health and safety of its
20 members, team members, and guests?

21 A. I'm not aware of any other reasons.

22 Q. Does -- now, we talked earlier about the need for
23 test results either of a surface or in the air; but I
24 wanted to ask you more generally if Allied World
25 disputes that people infected with COVID-19 likely

1 visited 24 Hour Fitness clubs prior to March 16th, 2020?

2 MS. BROCKMAN: Objection to form.

3 Q. (BY MR. WEISS) You would -- you would agree that
4 it's pretty likely that people infected with COVID
5 visited these fitness clubs, wouldn't you?

6 MS. BROCKMAN: Objection to form.

7 A. I haven't seen evidence of or data reflecting
8 that there was a COVID at -- on a structure, a surface,
9 piece of equipment at 24 Hour Fitness as a result of
10 someone diagnosed with COVID at that location.

11 Q. (BY MR. WEISS) Okay. But my question was a
12 little bit different. My question was does -- do you --
13 do you dispute that people with COVID visited 24 Hour
14 Fitness clubs before March 16th, 2020?

15 MS. BROCKMAN: Objection to form.

16 A. They very well may have or perhaps not. I
17 certainly can't say for certain here with you.

18 Q. (BY MR. WEISS) Do you know how many people on
19 average visited each 24 Hour Fitness club on a daily
20 basis before March 16th, 2020?

21 MS. BROCKMAN: Objection to form.

22 A. You mean aggregated over all their clubs
23 nationwide or a particular -- or a particular location?

24 Q. (BY MR. WEISS) On average, how many people
25 visited each individual club on a daily basis?

1 MS. BROCKMAN: Objection to form.

2 A. I don't know.

3 Q. (BY MR. WEISS) Okay. Do you know on average how
4 many people visited each club on a weekly basis?

5 A. No, I don't.

6 Q. Did Allied World ever ask that, for that
7 information from 24 Hour Fitness?

8 A. We -- we sent out a request for information that
9 I -- I'd have to review, but I don't believe so.

10 Q. Do you know how many clubs 24 Hour Fitness
11 operated in March of 2020?

12 MS. BROCKMAN: Objection to form.

13 A. I don't know. I'm sure quite a few, but I don't
14 know the number.

15 Q. (BY MR. WEISS) And is it your understanding that
16 24 Hour Fitness clubs were in pretty populated urban
17 areas?

18 A. Yes, they were.

19 Q. So is it Allied World's position that it's
20 possible that out of all the clubs 24 Hour Fitness
21 operated across the country, that it's possible that
22 there's not a single club where someone with COVID was
23 present before March 16, 2020?

24 MS. BROCKMAN: Objection to form.

25 A. Well, those are two distinct issues.

1 Q. All right. So the definition of pollution
2 incident has three different parts. And the first one
3 relates to: The discharge, emission, seepage,
4 migration, dispersal, release or escape of a pollutant
5 into or upon land, or any structure on land, the
6 atmosphere (including indoor air) or any watercourse or
7 body of water.

8 And then it continues, that's No. 1 -- that's
9 "a." Do you see that?

10 A. Yes, I do.

11 Q. And then "b." is: The presence of microbial
12 matter on, at, or within buildings or structures.

13 Do you see that?

14 A. Yes, I do.

15 Q. Okay. And we've agreed earlier that "microbial
16 matter" here includes the term "virus," correct?

17 A. Yes, it does.

18 Q. And Allied does not dispute that COVID-19 is a
19 virus, right?

20 A. That's correct.

21 Q. All right. And do you agree that the definition
22 of pollution incident that we're looking at does not
23 require that the incident be contained to a specific
24 scheduled location, correct?

25 MS. BROCKMAN: Objection to form.

1 interruption was caused solely and directly by a
2 pollution incident -- namely, the smoke being a
3 pollution incident -- that's one of the requirements for
4 business interruption coverage. So I would have to
5 determine, Mr. Weiss, whether the smoke was a pollution
6 incident and it was solely and directly -- the business
7 interruption was caused solely and directly from smoke.

8 Q. (BY MR. WEISS) Okay.

9 A. As opposed to other reasons.

10 Q. Well, smoke is a pollution incident under the
11 policy, correct?

12 A. Smoke is a pollution incident, and there may be
13 other reasons for closure. I'd have to -- I'd have to
14 evaluate that.

15 Q. In the situation with the smoke, if they had to
16 close because of the smoke being present in their
17 facility, but there also was a -- a directive from the
18 fire department that says all businesses within X radius
19 of the fire have to be closed as well, would that have
20 any bearing on whether the business interruption loss
21 was covered or not?

22 A. Yes, it would.

23 Q. Okay. How would that have bearing?

24 MS. BROCKMAN: Objection to form.

25 Go ahead, you can answer.

1 THE WITNESS: Thank you.

2 A. The pollution incident must be on, at, or under a
3 scheduled location.

4 Q. (BY MR. WEISS) Right.

5 A. And I don't know that the -- the smoke from the
6 neighboring property may constitute a pollution incident
7 on, at, or under a scheduled location. I'd have to
8 evaluate that.

9 But assuming there are alternative causes of the
10 closure -- namely, water damage from the fire
11 abatement -- may be a reason for closure. So that's not
12 solely and directly from a pollution incident and that
13 may, may not -- probably would not be covered.

14 Q. Okay. And what about in my hypothetical, if we
15 assume that the -- that the smoke from the fire is a
16 pollution incident that was in the scheduled location,
17 and you couldn't operate the scheduled location because
18 of the smoke, because it was so smokey, but you also had
19 a directive from the fire department that said all
20 businesses in a certain area, including where our
21 business is located, have to close down regardless of
22 whether you have smoke or not, you know, would that fire
23 department directive implicate whether there was
24 coverage or not at all?

25 MS. BROCKMAN: Objection to form.

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Plaintiff's Omnibus Appendix of Evidence in support of its

1 A. Depending upon what the fire department order or
2 directive was, it may not constitute a "solely and
3 directly" from the pollution incident. It may be, for
4 example, on this -- in this scenario, water damage
5 that -- that presented a situation where it was unsafe
6 to return to the facility.

7 Q. (BY MR. WEISS) What if the fire department says
8 we just want -- we need to cordon off this whole area
9 because we need to investigate this fire. So nobody can
10 come in, including our business which had the smoke
11 situation. So --

12 MS. BROCKMAN: Objection to form.

13 Q. (BY MR. WEISS) -- we not only -- so we not only
14 couldn't operate because of the smoke, but we also
15 couldn't operate because of the fire department
16 directive. Would that implicate coverage at all?

17 MS. BROCKMAN: Objection to form.

18 A. Yes, that would say that -- if there are other
19 reasons for closure, other than a pollution incident in
20 and of itself, there may not be coverage for business
21 interruption.

22 Q. (BY MR. WEISS) Okay. And so we --

23 A. There may not be coverage -- there may not be
24 coverage, anyway, because if -- if the fire -- if the
25 fire came from a neighboring property, the pollution

1 incident in and of itself, it wasn't at, on, or under a
2 scheduled location. So there may not be business
3 interruption at all under our policy.

4 I'd have to evaluate that and what was submitted
5 as such, in order to properly evaluate that notice of
6 incident when it came in or notice of pollution -- of
7 business interruption incident when it came in.

8 Q. Okay. Under the 24 Hour Fitness, can there ever
9 be a covered business interruption loss where there is a
10 pollution incident at a scheduled location but there
11 also is a governmental order that prevents the insured
12 from operating its business?

13 MS. BROCKMAN: Objection to form.

14 A. Yes, I would say it takes it out of the realm of
15 solely and directly by a pollution incident because,
16 Mr. Weiss, these orders were directed to people to abate
17 the proliferation of the virus.

18 Q. (BY MR. WEISS) I wasn't talking specifically
19 with the virus. Let's take my fire example. Assuming
20 that the -- let's say we have a fire that starts on our
21 scheduled location, so we don't have that problem, and
22 we have smoke that inundates the business and that's the
23 reason why we closed, because we have a bunch of smoke
24 in our property. And then the fire department comes in
25 and says you have to close your property, too.

1 So now we have the fire department saying we have
2 to close our property, plus we have -- we're closing it
3 because of the smoke. Does the fact that there is a
4 fire department order in that situation take it out of
5 the "solely and directly" language?

6 MS. BROCKMAN: Objection to form.

7 A. Yes, if the fire department order was for a
8 reason other than solely and directly from pollution
9 incident, yes, it takes it out of the context of "solely
10 and directly."

11 Q. (BY MR. WEISS) Okay. So if the fire department
12 order was because of the smoke, then would we still be
13 within the "solely and directly" language? In other
14 words, the fire department order is based on the fact
15 that we have smoke and smoke is the pollution incident,
16 so are we okay and can get coverage in that situation?

17 MS. BROCKMAN: Objection to form.

18 A. Smoke is a pollutant within the definition of the
19 policy. And if the order about closure is for smoke
20 from the fire?

21 Q. (BY MR. WEISS) Yes.

22 A. With no other reasoning behind it?

23 Q. Yes.

24 A. And in this -- in this fact pattern you're
25 presenting me, the fire was from the insured location?

1 Q. Correct.

2 A. There very well be may business interruption
3 associated with that.

4 Q. Okay. But it's your testimony that if the order
5 from the fire department was for some other reason in
6 addition to just the smoke, then we would no longer be
7 within that "solely and directly" language, correct?

8 A. That --

9 MS. BROCKMAN: Objection to form.

10 A. Excuse me. Yeah, that's right. If -- if in this
11 scenario, Mr. Weiss, the order was, well, there's water
12 damage and it's a safety hazard because of electrical
13 fires and live wires for someone to walk into this
14 facility and be injured, that's alternative cause and
15 that would not be solely and directly from a pollution
16 incident on, at, or under a scheduled location.

17 Q. (BY MR. WEISS) Okay. Finally, I don't know what
18 your --

19 MR. WEISS: Let's go off the record if it's
20 okay.

21 THE VIDEOGRAPHER: We're off the record at
22 2:18.

23 (Recess from 2:18 p.m. to 3:03 p.m.)

24 THE VIDEOGRAPHER: We're back on the record
25 at 3:03.

1 Does the -- or even, let's say, the government
2 order comes out during the two-week period that they're
3 closed. But do they get any business interruption
4 coverage for the period of time before the governmental
5 order comes out?

6 MS. BROCKMAN: Objection to form.

7 A. When presented with those situations, our
8 insureds are in a consult -- consultation with me,
9 always -- we were always able to find someone.

10 Now, Mr. Weiss, were the charges high? Because,
11 you know, markets dictate. You know, what somebody
12 charged before COVID to clean something, went up two or
13 three times as much during COVID. We always found
14 somebody. I never had a situation where somebody had to
15 wait a week to get a cleaning company to do the work.
16 Now, they -- they may have paid a premium associated
17 with it, and I understand that, but they got someone
18 there because they wanted to reopen as soon as possible.

19 Q. (BY MR. WEISS) So you're just not going to
20 accept my hypothetical, then?

21 MS. BROCKMAN: Objection to form.

22 A. Of all the claims I've had, I've never been
23 presented with that.

24 Q. (BY MR. WEISS) Let me ask you this question,
25 then: In the context of COVID-19, is it Allied World's

1 position that even if an insured can prove the presence
2 of COVID with a test, that there can't be any business
3 interruption losses solely and directly from a pollution
4 incident because of the various governmental orders that
5 also prevented businesses from operating?

6 MS. BROCKMAN: Objection to form.

7 A. Well, let's leave out of that the governmental
8 orders.

9 Q. (BY MR. WEISS) Uh-huh.

10 A. If an insured presents me with scientific
11 evidence of COVID on a surface and they advise me,
12 Glenn, we're closing because we need to abate it and we
13 don't want people to get sick, and that's how it's
14 presented to Allied World, that's solely and directly --
15 that's solely and directly caused by a pollution
16 incident on, at, or under a scheduled location.

17 Q. Uh-huh.

18 A. If presented with that, I see a scenario where
19 there is coverage.

20 Q. Okay.

21 A. Now, you're asking me about a governmental order
22 as -- on top of that?

23 Q. Right.

24 A. I don't want to argue with you. But I don't know
25 how -- why an insured would present me with that, if --

1 just looking at the insuring agreement, Mr. Weiss. If
2 they meet the requirements of Section 5.a., then I -- I
3 spring into action evaluating the coverage.

4 Q. What do you mean?

5 A. In other words, you tell me, well, Glenn, there's
6 a -- here's documentation -- documented evidence of a --
7 of a pollution incident, COVID at a scheduled location,
8 it's on the barbells in the weight room.

9 Q. Uh-huh.

10 A. And we need to close to clean it up. That
11 meets -- that meets the requirements of "solely and
12 directly." Now, there's a 72-hour deductible or waiting
13 period for BI, business interruption, to be applicable
14 here; but after application of the 72-hour, then there
15 may be coverage.

16 Now, if you said, well, what about also if I give
17 you the governmental order requiring closure? Now
18 that's another reason for closure unrelated to solely
19 and directly from a pollution incident. That's
20 separate. Now there wouldn't be solely and directly
21 from a pollution incident based upon the governmental
22 order.

23 Because the governmental order is not issued for
24 that location, but it's issued to a city or a
25 municipality that people shelter in place to abate the

1 virus. They didn't have doctors to treat people, they
2 didn't have medicine to give to people. So until they
3 did, we had these shelter -- these orders in place not
4 having to do with the pollution incident.

5 Because, of course, you remember that its central
6 operations stayed open, so Walmart stayed open, the food
7 portion of Walmart stayed open. It's not because people
8 couldn't get COVID in the food section. They were
9 considered an essential operation. So it's abatement to
10 prevent people from getting the virus.

11 Q. Do you see the policy up on your screen now?

12 A. Yes, I do.

13 Q. Okay. So we're back to Exhibit 2. I'm going to
14 go to page that's Bates numbered 205 -- that's probably
15 too big.

16 A. Thanks, appreciate it.

17 Q. How's that?

18 A. Good, good.

19 Q. Okay. So I'm looking at the definition of
20 business interruption, No. 3. Do you see that?

21 A. Yes, I do.

22 Q. And it says: Business interruption means the
23 necessary suspension of your operations, at a scheduled
24 location, but only if such suspension of your operations
25 first commenced during the policy period.

1 Does Allied World agree that -- at least that the
2 closure of 24 Hour Fitness's clubs was a suspension of
3 its operations?

4 MS. BROCKMAN: Objection to form.

5 A. Suspension in here is -- I'd have to look up the
6 definition of it, but if suspension means closure, then
7 I assume it's synonymous with it.

8 Q. (BY MR. WEISS) And so the close -- the closure
9 of operations would be the same thing as a suspension;
10 is that how Allied operates when it's handling claims
11 under this language?

12 MS. BROCKMAN: Objection to form.

13 A. Suspension could be temporary, but it could also
14 mean permanent. And suspension and closure, I would
15 assume, are one and the same.

16 Q. (BY MR. WEISS) Okay. And then how does Allied
17 World apply the term "necessary" when it's referring to
18 whether -- to a suspension? Are you aware of any
19 particular definition of -- that Allied uses to
20 determine whether a suspension of operations was
21 necessary?

22 MS. BROCKMAN: Objection to form.

23 A. I construe that as suspension coming -- necessary
24 suspension coming from somebody within authority within
25 an organization to issue such suspension.

1 Q. (BY MR. WEISS) What type of -- within what
2 organization, within the insured's organization or some
3 outside organization?

4 A. Within --

5 MS. BROCKMAN: Objection to form.

6 A. Within the insured's organization.

7 Q. (BY MR. WEISS) Okay. Okay. So -- so in the
8 case of 24 Hour Fitness, if the decision was -- to
9 suspend its operations was made by the management of the
10 company with authority to make the decision, do you
11 agree then that that was a necessary suspension of
12 operations?

13 MS. BROCKMAN: Objection to form.

14 A. It was a decision made by the insured to close
15 its operations to abate the virus and prevent its
16 members from being exposed to other people who may have
17 the virus.

18 Q. (BY MR. WEISS) Maybe I should ask it this way:
19 Does Allied World take the position that it -- that the
20 closure of the clubs was not necessary?

21 A. Up until the order of the governmental
22 authorities, it was not necessary. But it -- after the
23 orders came out about non-essential operations being
24 closed, but up until that point, it was not necessary --

25 Q. And why do you -- why wasn't it necessary -- if

1 24 Hour Fitness's management decided that they should
2 close their operations, why are you saying that it
3 wasn't necessary for them to do so?

4 A. Well, I thought you were asking me separate from
5 the closure orders.

6 Q. Right. Separate from the --

7 A. So you're asking me separate from the closure
8 orders?

9 Q. Yes.

10 A. So, in other words, pre-closure order, they
11 decided to suspend operations?

12 Q. Correct.

13 A. That was a voluntary decision on their part,
14 without -- without submitting to Allied World
15 documentation of a pollution incident at the location.
16 But after the orders ordering non-essential businesses
17 to close to abate the virus -- not that there was a
18 pollution incident or COVID at a location, but to abate,
19 prevent people from mingling in public spaces that were
20 not necessary -- they had no choice in the matter.

21 Q. Okay. So does Allied World then define the term
22 "necessary" to mean whether you have a choice or no
23 choice?

24 MS. BROCKMAN: Objection to form.

25 A. Well, after these orders came out, I -- I

1 certainly could tell you that some non-essential
2 businesses in the New York area, Mr. Weiss, attempted to
3 stay open; but various governmental agencies intervened
4 and told them, look, we got to abate the virus. So you
5 need to close. Not because it was COVID in the
6 restaurant or COVID in the -- in the -- in a gym, but
7 rather to prevent people from going into locations and
8 mingling with one another.

9 Q. (BY MR. WEISS) Can a suspension of operations be
10 necessary without a governmental order requiring
11 suspension of operations, just in general, not specific
12 to COVID, but in general?

13 A. Yes, of course. Let's say there's a catastrophic
14 explosion or fire; yes, of course.

15 Q. And what about in your situation with your COVID
16 policyholder where they closed the gym -- or wasn't --
17 strike that.

18 The situation you talked about earlier with the
19 policyholder that contacted you and said we had somebody
20 who tested positive for COVID, we'd like to close and
21 get somebody in to clean, did you consider that closure
22 to be necessary until the COVID -- or the suspected
23 COVID was cleaned in that situation?

24 MS. BROCKMAN: Objection to form.

25 A. No. And here's why: That particular insured,

1 they wanted to continue operations and they wanted to
2 clean the work area of the person who departed. So
3 without even presenting me with evidence of bacteria on
4 a surface, they wanted to clean, be ready and open for
5 business as soon as possible. What they often did was
6 at night, they'd have a cleaning crew come in and then
7 tell the business you're open for operations tomorrow
8 morning. So they were very motivated to maintain
9 operations.

10 Q. (BY MR. WEISS) Okay. Let's take it out of that
11 situation and just let's take it into another situation
12 where you have a business that actually has a positive
13 COVID test from a surface -- if that was even possible,
14 but let's assume that they have that -- and they decide
15 we have to close until we can get this cleaned up. And
16 so they close their business and then they arrange for
17 cleaning and then they get it cleaned and then they
18 reopen.

19 Would Allied World consider that closure to have
20 been necessary if that's what the policyholder decided
21 that they needed to do?

22 MS. BROCKMAN: Objection to form.

23 A. Yeah, I'm not quite understanding that. Would
24 you just run that by me briefly or --

25 Q. (BY MR. WEISS) Sure.

1 A. Again one more time.

2 Q. Sure. Let's say I operate a gym and I have --
3 somebody comes in and they -- they go into my Pilates
4 studio and they sneeze all over the place and they
5 say -- and then they tell us, oh, by the way, I just
6 tested positive for COVID. I get out my handy COVID
7 tester and I test the surfaces in my Pilates studio --
8 assuming that there's such a thing -- and I confirm that
9 I have COVID all over the place in my Pilates studio and
10 maybe even in other places in the gym where this person
11 was.

12 And so then I decide I'm going to have to close
13 my gym until I can get this cleaned. So I close down my
14 gym to get it cleaned. I suspend my operations. Would
15 you consider that to be a necessary suspension of
16 operations?

17 MS. BROCKMAN: Objection to form.

18 A. You present me with facts of somebody was in the
19 Pilates studio and they were sneezing, coughing all over
20 the place, you tested, and COVID was present on mats and
21 various other equipment in the studio?

22 Q. (BY MR. WEISS) Correct.

23 A. And you decide, of course, close it down and
24 clean the place?

25 Q. Right.

1 A. That's solely and directly from -- COVID is a
2 virus, is a pollution incident, and it's solely and
3 directly -- the business interruption is caused solely
4 and directly from a pollution incident at a scheduled
5 location.

6 Now you call me and say, Glenn, I cleaned the
7 place up tonight. My question for you, Mr. Weiss, was
8 now that it's cleaned, wiped clean, floor to ceiling and
9 everything in between, you're going -- I assume then
10 you're going to be open for operations tomorrow and --

11 Q. Right. But my question --

12 A. -- say that --

13 Q. -- to you was do you agree that it was necessary
14 for me to close the operation to clean?

15 MS. BROCKMAN: Objection to form.

16 Q. (BY MR. WEISS) I'm focussing on the term
17 "necessary" suspension of operations. No government
18 told me I had to close down, but I decided --

19 A. You tested. You tested and you present me with
20 evidence of COVID in -- in various fluids or bacteria,
21 saliva, at the location, that's COVID, solely and
22 directly from a pollution incident at a location, you
23 decide to close. Yes.

24 Q. So you're not going to argue that it was
25 unnecessary for me to close in that case, right?

1 A. No, I'm not.

2 Q. Okay. Let's look on the same page, the business
3 interruption period, No. 5. It says: Business
4 interruption period means the period of time that begins
5 the number of hours shown as the "Business Interruption
6 Waiting Period" in Item 3.

7 And we've seen that that was 72 hours.

8 And then it says later on that it ends on the
9 time and date that is the earlier of, a., the time and
10 date that the insured resumes normal business operations
11 at the scheduled location or at another location; b.,
12 the time and date that the insured, acting reasonably
13 and with due diligence, should have resumed normal
14 business operations; and then c., is the time and date
15 that's 365 days after the time and date that the
16 business interruption first commenced.

17 And I want to focus on the term "normal business
18 operations" there. What is -- what does normal business
19 operations mean according to Allied World?

20 MS. BROCKMAN: Objection to form.

21 A. The time and date that the insured resumes normal
22 business operations. So if someone is a gym, business
23 is to operate and run a gym, it's when the doors open
24 for the gym.

25 Q. (BY MR. WEISS) Okay. Let's take my

1 we certainly were not going to offer comment about it.

2 Q. Do you recall that in this March 2020 time period
3 that there was a general lack of testing kits available
4 to test individuals for COVID?

5 MS. BROCKMAN: Objection to form.

6 A. Yes. And in addition, that there were a lack of
7 testing kits available, but also lack of PPE at the time
8 for people, masks -- gowns to wear, masks to cover their
9 faces. And that also played a major role in the
10 stay-at-home orders from cities and governmental
11 agencies, because people were searching for masks to
12 wear. They were going into drug stores and department
13 stores to find them, and they were all sold out. So
14 people had to shelter in place until they were able to
15 wear protective equipment.

16 Q. (BY MR. WEISS) Right. And in addition to the
17 inability to test individuals due to the lack of test
18 kits available, would you also agree that there was a
19 similar inability to test air and surfaces for COVID-19
20 as well during this early time period?

21 MS. BROCKMAN: Objection to form.

22 A. There were challenges all around and during this
23 time frame -- and I -- I don't have a calendar in front
24 of me; Mr. Weiss, but the vaccine wasn't available in
25 March --

1 Q. (BY MR. WEISS) Right.

2 A. -- of 2020. That didn't come out until I believe
3 months after; and even when it did, people had to queue
4 up on lines for hours to get it. So the governmental
5 orders about sheltering in place except for
6 non-essential personnel and businesses, I understand the
7 reasoning behind it.

8 Q. Did Allied World review any governmental orders
9 in connection with its analysis of the 24 Hour Fitness
10 claim? And the reason why I ask is that I didn't see
11 any in the claim file documents that were produced.

12 MS. BROCKMAN: I'll object to the extent
13 that it seeks information protected by the
14 attorney-client privilege. So if your answer
15 incorporates any information you received from counsel,
16 I'll instruct you not to answer.

17 A. I've been advised, Mr. Weiss, not to respond.

18 Q. (BY MR. WEISS) Well, did you -- I'm kind of
19 unclear how that invades attorney-client privilege.
20 Because my question -- setting aside what counsel may
21 have reviewed, did any claims handlers, Ms. Pertain or
22 yourself or anybody else employed at Allied World,
23 review any governmental orders in connection with the
24 24 Hour Fitness claim?

25 A. Yes.

1 Q. Okay. And what governmental orders were
2 reviewed?

3 A. Any order or orders that apply to a given
4 jurisdiction where an insured submitted a notice of
5 business interruption loss, we evaluated to determine
6 whether there -- the order was relating to COVID solely
7 and directly at a scheduled location -- at a given site
8 or address that the governmental order issued saying at
9 1234 Park Avenue is off limits because there's COVID at
10 that specific location.

11 Q. Okay. So I guess my question then is why weren't
12 copies of any of these orders in the documents from the
13 claim file that we've been given?

14 A. I would have to go back and research that. I
15 will tell you at the time when notices were coming in
16 fast and furious, we were reviewing orders on the fly.
17 By that, I mean at that moment in time looking for
18 verbiage along the lines of our insuring agreement here.
19 So that's the first thing -- we're getting the order,
20 we're looking for the verbiage, identifying an insured
21 location as a site that had COVID present in it
22 requiring closure.

23 Q. So if -- if some claims handler on the 24 Hour
24 Fitness claim reviewed, for example, an order from
25 California, would you expect to see some indication of

1 letter which we've marked as Exhibit 12, and the part
2 about Allied's conclusion that the suspension of 24
3 Hour's operations did not appear to have been caused
4 solely and directly by the presence of COVID but,
5 rather, appeared that the Oregon shelter-in-place order
6 suspended all non-essential business operations,
7 including 24 Hour's business.

8 And my question was, can you explain why the
9 existence of the Oregon shelter-in-place order means
10 that the suspension of 24 Hour's operations at Portland
11 was not caused solely and directly by the presence of
12 COVID on, at, or within buildings or structures?

13 MS. BROCKMAN: Objection to form.

14 A. Well, regarding the Portland health gym -- health
15 club, there was no data presented to Zeesie or me --
16 well, to Zeesie, the main claim handler, that there was
17 a pollution incident at -- on, at, or under the health
18 club and the facility was closed solely and directly as
19 a result of COVID-19 at that location.

20 Q. (BY MR. WEISS) And it's Allied's position,
21 correct, that even if they had presented evidence of a
22 pollution incident, that the business interruption
23 wouldn't have been solely and directly from that
24 incident because the order issued in Oregon was a broad
25 order to close non-essential businesses; is that a fair

1 statement?

2 MS. BROCKMAN: Objection to form.

3 A. Well, taking both in their totality --

4 Q. (BY MR. WEISS) Uh-huh.

5 A. -- the -- the order to suspend non-essential
6 business operations was to -- was, as you read a moment
7 ago, to promote social distancing and minimize the
8 spread of COVID in the population at large, as opposed
9 to COVID at 24 Hour Fitness in Portland, Oregon, at such
10 and such a street in -- in Portland, Oregon.

11 MR. WEISS: Okay. So why don't we take our
12 break now. And if you wouldn't mind, if you're able to
13 check on that one question that we were talking about,
14 and I think it was whether the -- the payment that you
15 plan to make on a claim involving COVID was for a
16 business interruption loss. Okay?

17 THE WITNESS: And -- yes, and I previously
18 spoke about the payment I made due to ERE, emergency
19 response expense.

20 MR. WEISS: Correct. Yep.

21 THE VIDEOGRAPHER: We're off the record at
22 5:02.

23 (Recess from 5:02 p.m. to 5:21 p.m.)

24 THE VIDEOGRAPHER: The time is 5:21 p.m.,
25 and we are back on the record.

1 MR. WEISS: All right. So let's mark as the
2 next Exhibit -- 13, I believe?

3 THE REPORTER: Correct.

4 MR. WEISS: What was previously identified
5 as 19.

6 (Exhibit No. 13 marked.)

7 Q. (BY MR. WEISS) And this is another April 27th
8 letter from Ms. Pertain to Jeremy Gottlieb at 24 Hour.
9 Bates number is AWPLLSP 59.

10 And, Mr. Serrano, do you see it --

11 MS. BROCKMAN: David, can you screen share
12 that?

13 MR. WEISS: Oh, I'm sorry. There we go.

14 Q. (BY MR. WEISS) Do you see that up on your
15 screen, Mr. Serrano, now?

16 A. Yes, I do.

17 Q. Okay. And do you recognize this as the -- well,
18 let me ask you, what do you -- what do you recognize
19 this as?

20 A. This is Allied World's coverage determination
21 letter dated April 27th, 2020, addressed to Jeremy
22 Gottlieb at 24 Hour Holdings Corp.

23 Q. And does this letter relate to the locations,
24 other than the Portland location that was the subject of
25 the prior letter we looked at, which was Exhibit 11?

1 A. Yes, it is.

2 Q. And, essentially, was Allied World's coverage
3 determination with regard to these other locations the
4 same as it was with respect to the Portland location?

5 A. Yes, it -- yes, it is.

6 Q. And, again, as with the prior exhibit, you would
7 have reviewed this before it got sent out?

8 A. Yes, I did.

9 Q. All right.

10 MR. WEISS: I'm going to jump ahead, so
11 let's mark as the next exhibit, 14, what was previously
12 identified as 25.

13 (Exhibit No. 14 marked.)

14 Q. (BY MR. WEISS) And this is a June 10th, 2020,
15 letter from me to Ms. Brockman. Do you have -- do you
16 have that up on your screen?

17 A. Yes, I do. Thank you.

18 Q. And this is the -- is Bates numbered AWPLL 1 as
19 the beginning number. Do you recall seeing this letter
20 in around June of 2020?

21 A. Yes, I do.

22 Q. Okay. If we go to the second page of the letter,
23 I'll just scroll down to it, and let me know if you want
24 me to make it bigger for you.

25 A. Oh, I've got my version here also.

1 Q. Oh, good. Okay. So do you recall earlier we
2 were talking about, in a prior letter, some statements
3 that Mr. Gottlieb referred to where he said that
4 governmental officials were telling people to act as if
5 everyone had COVID-19; do you recall that --

6 A. Yes, sir.

7 Q. -- we talked about that earlier? Okay.

8 A. Yes, I remember reading that with you.

9 Q. Okay. And then here in this letter on page 2 at
10 the beginning part it says: In March 2020, the United
11 States Surgeon General stated, "Everyone needs to act as
12 if they have the virus right now. So, test or not test,
13 we need you to understand you could be spreading to
14 someone else. Or you could be getting it from someone
15 else. Stay at home."

16 And then the next -- and then after that it says:
17 On April 20th, 2020, the Governor of Ohio tweeted that,
18 "We must continue to assume that everyone has COVID --
19 hashtag COVID-19 because it is not going away until we
20 have a vaccine."

21 Do you see that?

22 A. Yes, I do.

23 Q. And do you recall seeing this when you -- when
24 you got the letter in June of 2020?

25 A. Yes, I do.

1 Q. Did -- do you know if anyone at Allied World did
2 anything to verify those statements or evaluate them at
3 all?

4 MS. BROCKMAN: I'll caution you not to
5 respond to the extent that it discloses information
6 protected by the attorney-client privilege.

7 THE WITNESS: All right. Thank you,
8 Elizabeth.

9 A. And so I'm not going to respond to that --
10 those -- that question, Mr. Weiss.

11 Q. (BY MR. WEISS) Okay. Did -- did Allied World
12 disagree with the statement from the governor of Ohio
13 that, "We must continue to assume that everyone has
14 COVID-19 because it's not going away until we have a
15 vaccine"?

16 MS. BROCKMAN: Objection to form.

17 A. Well, I -- may I respond in my individual
18 capacity to that statement?

19 Q. (BY MR. WEISS) Yeah. You're free to qualify
20 your answers as you -- as you want to. So that's fine
21 with me. Thank you.

22 A. You're welcome. It's written here: The governor
23 of Ohio tweeted that, "We must continue to assume that
24 everyone has COVID-19 because it's not going away until
25 we have a vaccine."

1 Now, there's a lot of different statements in
2 there, but let's take the first part.

3 Q. Uh-huh.

4 A. Assume everyone has COVID. Obviously everyone
5 didn't have and doesn't have COVID. Certain people did
6 and that's unfortunate, of course; but not everyone had
7 COVID.

8 And then he writes: Because it's not going away.

9 I'm not sure what that has to do with the first
10 part of the sentence. And it's not going away until we
11 have a vaccine. I get his point about people sheltering
12 in place, I understand that. But his statement about we
13 must continue to assume that everyone has COVID,
14 obviously everyone didn't have COVID, because if we did,
15 that would be a very dire circumstance.

16 Q. I think the point he was trying to make was that
17 because testing was so sparse and because asymptomatic
18 people were spreading the disease, who didn't even know
19 they had it, that you just had to assume everyone had
20 COVID and take precautions along those lines.

21 So it gives -- with that explanation, does
22 that -- does that help you at all understand the
23 statement? And you -- and this is not on behalf of
24 Allied. I'm fine just you giving your own testimony on
25 this.

1 A. Thank you.

2 MS. BROCKMAN: Objection to form.

3 A. Well, certainly if he -- if he wrote in the tweet
4 exactly as you said just now.

5 Q. (BY MR. WEISS) Uh-huh.

6 A. I would agree with it, but he didn't. So I
7 won't.

8 Q. Okay. Fair enough.

9 In the next paragraph there's a reference to a
10 U.S. Supreme Court case, South Bay United Pentecostal
11 Church versus Gavin Newsom, Governor of California. Do
12 you recall if you read that case in connection with
13 receiving this letter on behalf of 24 Hour Fitness?

14 A. I'm reading it. (Examining document.) Yes, I
15 just read it. And not to breach any attorney-client
16 privileges --

17 Q. Uh-huh.

18 A. -- this was addressed to Elizabeth, who's on here
19 with me now, and we conferred about it. And I'll just
20 leave it at that.

21 Q. That's fine.

22 So going -- going down further, do you recall
23 that in -- in the letter there was -- and I think we
24 talked about this earlier briefly, that 24 Hour Fitness
25 had provided a list of various incidents related to

1 SIGNATURE PAGE
23 I, 30(b)(6) DEPOSITION OF ALLIED WORLD NATIONAL
4 ASSURANCE COMPANY THROUGH GLENN SERRANO, AND DEPOSITION
5 OF GLENN SERRANO, have read the foregoing deposition and
6 hereby affix my signature that same is true and correct,
7 except as noted on the correction page.
89
10

11 30(b)(6) DEPOSITION OF
12 ALLIED WORLD NATIONAL
13 ASSURANCE COMPANY THROUGH
14 GLENN SERRANO, AND
15 DEPOSITION OF GLENN SERRANO16 THE STATE OF TEXAS)
17 COUNTY OF _____)18
19 Before me _____ on this day personally
20 appeared _____ known to me [or proved to
21 me on the oath of _____ or through
22 _____ (description of identity card or
23 other document)] to be the person whose name is
24 subscribed to the foregoing instrument and acknowledged
25 to me that he/she executed the same for the purposes and
consideration therein expressed.Given under my hand and seal of office this _____
day of _____, 2022.26
27
28

29 NOTARY PUBLIC IN AND FOR
30 THE STATE OF T E X A S31
32 My Commission Expires:
33
34
35 _____

1 THE STATE OF TEXAS)
2 COUNTY OF HARRIS)

3 REPORTER'S CERTIFICATION
4 REMOTE VIDEOCONFERENCE 30(b)(6) DEPOSITION OF ALLIED
5 WORLD NATIONAL ASSURANCE COMPANY THROUGH GLENN SERRANO,
6 AND DEPOSITION OF GLENN SERRANO
7 TAKEN SEPTEMBER 14, 2022

8 I, ROBIN GROSS, Certified Shorthand Reporter in and
9 for the State of Texas, hereby certify to the following:

10 That the witness, 30(b)(6) DEPOSITION OF ALLIED WORLD
11 NATIONAL ASSURANCE COMPANY THROUGH GLENN SERRANO, AND
12 DEPOSITION OF GLENN SERRANO, was duly sworn by the
officer and that the transcript of the oral deposition
is a true record of the testimony given by the witness;

That the deposition transcript was submitted on

_____ to the witness or the attorney for the
witness for examination, signature and return to Nell
McCallum & Associates, by _____;

That the amount of time used by each party at the
deposition is as follows:

13 MR. DAVID E. WEISS - 5:35

14 I further certify that I am neither counsel for,
15 related to, nor employed by any of the parties in the
16 action in which this proceeding was taken, and further
that I am not financially or otherwise interested in the
outcome of the action.

17 Certified to by me this 27th day of September, 2022.

20 

21 ROBIN GROSS CSR, TEXAS CSR NO. 9015
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